Having regard to Regulation No 97 of the Council of the European Communities of 16 January 1969;
Having regard to the Protocol on the Statute of the Court of Justice of the EEC, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

in answer to the question referred to it by the Bundesfinanzhof of the Federal Republic of Germany under the order made by that court on 21 October 1969 hereby rules:

> **The expression 'manioc flours' within the meaning of Article 1 (d) of Regulation No 19/62, read in conjunction with heading 11.06 of the Common Customs Tariff, mentioned in the annex to that regulation, must be interpreted as referring to all farinaceous substances obtained from manioc roots, irrespective of the treatment which those roots may have undergone, where the product has a starch content in excess of 40 %.**

Lecourt Monaco Pescatore

Donner Trabucchi Strauß Mertens de Wilmars

Delivered in open court in Luxembourg on 18 June 1970.

A.Van Houtte — Registrar

R. Lecourt — President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 12 MAY 1970[1]

Mr President,
Members of the Court,

The two cases on which I am now stating my views have partly the same subject-matter, that is, the interpretation of tariff heading 11.06 A of the Common Customs Tariff ('manioc flour'). The products under this heading are subject to the common organization of the market in cereals and its

1 — Translated from the German.

system of levies by virtue of Article 1 (d) of Regulation No 19 of the Council (OJ 1962, p. 933) in conjunction with the annex to this regulation. I may therefore deal with the two cases in a single opinion although a connexion between them according to the precedent set in Cases 28–30/62 has not been declared. In order to understand the proceedings the following observations must be made on the facts:

On 20 May 1966 the respondent in the main action in Case 72/69, a company with its registered office in Hamburg, applied to the Bremen-Europahafen Customs Office for clearance of a certain quantity of 'Thailand tapioca waste flour'. It was stated in the customs declaration that the products had been rendered inedible and contained, according to the terms of the contract, 65 % starch, including soluble carbohydrates. In fact the Goods Inspection Department of the Bremen-Hansator Customs Office confirmed a starch content of more than 55 %. The company requested that the goods should be classified as 'residues of starch manufacture' under the—duty-free—tariff heading 23.03 of the German Customs Tariff. However, the Customs Office did not agree with this classification and, on the contrary, applying the abovementioned tariff heading 11.06 A of the Common Customs Tariff, issued a notice of assessment to levy on the goods which were described as 'manioc flour'. The Customs Office based its decision in particular on an instruction issued by the Federal Minister for Finance on 29 December 1965 which provided that tapioca waste could be classified under tariff heading 23.03 only if it had a maximum starch content of 55 % in the dry material, whereas if the starch content was higher it came under tariff heading 11.06 A as 'manioc flour'.

The same thing happened to the respondent in the main action in Case 74/69, another company with its registered office in Hamburg. On 11 July 1966 it applied to the Bremen-Überseehafen Customs Office for clearance of a certain quantity of 'residues from the manufacture of starch from tapioca—waste—with a starch content of more than 40 %'. Thailand was stated as the country of origin. Here too, contrary to the contention of the importer, the Customs Office did not apply tariff heading 23.03 of the German Customs Tariff but tariff heading 11.06 A of the Tariff of Levies. A levy was accordingly imposed in a notice of assessment made on 22 July 1966. In this case, the Customs Office invoked the Explanatory Notes to the German Customs Tariff 1966 in the version given in the second regulation amending these explanatory notes of 27 June 1966, and this was of importance in the formulation of the questions referred. With regard to tariff heading 11.06 these notes state: 'This includes flours and meals made from products under heading 07.06. Under A are included in particular, regardless of their process of manufacture or description, all fine or coarser flours obtained from the roots of cassava (manioc utilissima), or pressed into pellets, or in the form of crumbs, or in other forms. The following are excluded: ... (e) residues from the manufacture of starch from manoic, pelletized by compression, or in the form of crumbs or in any other form (tariff heading 23.03)'. In addition they state with regard to tariff heading 23.03: 'Only products the starch content of which, in relation to dry material, does not exceed 40 % shall be deemed to be "residues from the manufacture of starch from manioc".'

Nevertheless, the two importers were not satisfied with this. After unsuccessful objections they did in fact succeed in proceedings before the Finanzgericht in procuring the annulment of the notice of assessment to levy. The Finanzgericht held that the product in question could not be regarded as flour from tapioca roots because it was not a product of dry milling, as required by the explanatory notes to tariff heading 11.06, but a product obtained by washing and dried after the removal of the starch. Since it no longer contained the separated starch it could only be the residue of starch manufacture, that is to say, a product falling under tariff heading 23.03. The Hauptzollamt in turn appealed against this decision to the Bundesfinanzhof. It maintained that the manufacturing process was irrelevant to the concept of 'manioc flour' and that the explanatory notes to tariff heading 11.06 of the German Customs Tariff merely mentioned, by way of example, the commonest among the possible manufacturing processes. Given a tapioca flour with a starch content customary in the trade, no chemist could tell how it had been manufactured. On the other hand, the interpretation of the words 'residues from the manufacture of starch' could not be based solely on the primitive methods used by small cultivators in a country that was still technologically underdeveloped. Residues within the meaning of tariff heading 23.03 were therefore only products from which matter of value could no longer be extracted in an economically viable way. Consequently, the Explanatory Notes to the Brussels Customs Tariff Nomenclature relating to tariff heading 23.03 provided that this heading only included products which consisted mainly of raw fibres. The experts of the governments of the Member States of the European Economic Community had also confirmed that so-called 'tapioca waste' with a starch content of more than 40% in dry matter must be considered as manioc flour coming under tariff heading 11.06. This view was also supported by the Federal Minister for Finance, who participated in the proceedings. The respondents, on the other hand, maintained that manioc flour under Tariff Heading No 11.06 had to be solely the product of a grinding process. There were absolutely sure criteria to distinguish between tapioca waste and ground tapioca roots. Any experienced commercial chemist could distinguish tapioca waste and ground tapioca roots on the basis of the total visual impression, the sand content, the content of corroded starch grains, the raw fibre content and the content of soluble carbohydrates. The criterion laid down in the instruction of the Federal Minister for Finance of 29 December 1965 of a maximum starch content of 55% in dry matter was just as arbitrary as the declaration of the experts of the governments of the Member States that tapioca waste with a starch content of more than 40% in dry matter should be considered as manioc flour. From the point of view of production techniques it was impossible or contrary to economic common sense to extract industrial residues with a starch content of less than 40% from Thailand manioc roots. The abovementioned Second Regulation to Amend the Explanatory Notes to the German Customs Tariff of 1966 of 27 June 1966 should therefore be considered invalid. In fact, the Council of the EEC alone was empowered to amend the list of products mentioned in Article 1 (d) of Regulation No 19.

Thus, for a decision in the proceedings pending before the Bundesfinanzhof the necessity arises of interpreting Community law, that is, to determine the meaning of 'manioc flour' in Article 1 (d) of Regulation No 19/62, and, in Case 74/69, to elucidate the question whether the Explanatory Notes to the German Customs Tariff can be used to interpret the definition of the product in question here. Therefore, in accordance with Article 177 of the EEC Treaty, the Bundesfinanzhof by an order of 21 October 1969 stayed the proceedings and referred the following questions for a preliminary ruling:

In Case 74/69:

'(a) Is Article 23 (1) of Regulation No 19 of the Council of the European Economic Community on the progressive establishment of a common organization of the market in cereals of 4 April 1962, (OJ 1962, p. 933) whereby the Member States shall take all measures with a view to adopting their provisions laid down by law, regulation or administrative action so that this regulation may take effect in practice as from 1 July 1962, to be understood as meaning that the Member States are entitled and obliged to state and specify by provisions of internal law, the descriptions of the products subject to the levy (Article 1 of the regulation)?

(b) If not:
Is Article 1 of Regulation No 19/62 of the Council, which lists goods appearing in the Common Customs Tariff, to be understood as meaning that these descriptions of products are capable of being interpreted by the national legislature for so long as there is no interpretation according to Community law?'

In Cases 72 and 74/69 in which the same question is posed in substantially similar terms:

'(c) Is the term "manioc flour" as used in Article 1 (d) of Regulation No 19/62 in conjunction with the annex to that regulation to be interpreted to cover any product derived from manioc roots, irrespective of the manufacturing process, with a starch content in excess of 55 % (the order making the reference in Case 74/69 mentions "in excess of 40%") or are other maximum or minimum contents of other constituents, for example, raw fibres, sugar or protein, also implied by this concept?'

The respondents, the Government of the Federal Republic of Germany and the Commission of the European Economic Community have submitted written observations on these questions in accordance with Article 20 of the Protocol on the Statute of the Court of Justice. In addition, these parties expressed their views at the hearing on 21 April.

In my opinion, the following observations must be made on the problems raised.

1. Questions 1 and 2 in Case 74/69:

First of all, with regard to the first two questions, which I should like to examine together, they put in issue (in relation to the German Regulation of 27 June 1966 on the Explanatory Notes to the Customs Tariff) the power of the Member States to elucidate the descriptions of the products subject to the levy listed in Article 1 of Regulation No 19 and to distinguish them from one another by means of national provisions or, where there is no Community law interpretation, to leave the interpretation of the descriptions of products to the national legislature. These questions are not new to the Court; they correspond substantially with those raised in Case 40/69. At my suggestion, the Court in that case gave an essentially negative answer for the Member States. As the respondents in the main action and the Commission in particular pointed out, a similar anwer will have to be given in the present proceedings.

It cannot in fact be denied that there is a close connexion in time and in subject-matter between the market organization for poultry meat of Regulation No 22 and that for cereals in Regulation No 19. This accounts for the fact that Article 1 of the common organization of the markets in cereals (which together with the annex to the regulation lists the products in question by using the nomenclature of the Common Customs Tariff) and Article 23 of this regulation (whereby the Member States shall take all measures with a view to adapting their provisions laid down by law, regulation or administrative action) have no functions other than those attributed to Articles 1 and 14 of Regulation No 22 which were at issue in Case 40/69. Therefore, it must also be held in the present cases that the sovereignty in tariff matters in respect of products subject to an organized market has been transferred to the Community. Consequently, the descriptions of products used in Article 1 and the Annex to Regulation No 19 must be definitively interpreted on the basis of Community law, since it is only in this way that the identical scope, that is to say, the uniform application, of the common organization of the markets can be ensured in all the Member States. For this purpose, we can use (and this permits it to be said that there is no omission to be rectified) the Explanatory Notes to the Brussels Nomenclature upon which the Common Customs Tariff is based, and, in particular, the Tariff Classification Rules for the Common Customs Tariff which were laid down (in the Regulation of 13 February 1960) at the time of its adoption. On the other hand, there is no scope in principle for powers vested in the national legislature, by virtue of which it may, in the exercise of a discretion, issue binding rules of interpretation; at most it might be said that it can issue explanations for internal use, provided, however, that they are compatible with Community law. Since this fundamental conclusion ensues from the system of the common organizations of markets and the determination of their scope by means of a detailed list of products, a different result cannot be derived from Article 23 of Regulation No 19 (which, as I have said, requires the adaptation of national legislative provisions). Its main purpose is to emphasize the obligation, which is in fact already imposed on the Member States by Article 5 of the Treaty, to eliminate obstacles arising from their national legislation and to adapt their domestic legal systems to the (in some cases, considerable) innovations of the common organization of the market. In addition, Article 23 establishes the principle of the division of labour which exists to a greater or lesser extent in all organizations of markets and according to which the administrative implementation (including the calculation of the amounts of the levies and their collection) is assigned to the States themselves. They are expressly encouraged to create the organizational and legislative conditions for this purpose. On the other hand, to the extent that legislative powers have been transferred to the Community, Article 23 by no means authorizes the Member States to determine or to supplement the *scope* of concepts used in the organization of a market by means of binding legislative provisions.

Contrary to the view of the Government of the Federal Republic of Germany, the particular circumstances of the present case, namely, the fact that in drawing up its regulation the German Government followed a recommendation of the Commission of 13 May 1966 which in relation to the question of tariff classification at issue was based on the unanimous opinion of the customs experts of the Member States, that is to say, an experienced working party, do not permit a development or even a modification of this case-law. There is no doubt that such agreement among the experts in customs nomenclature is a strong indication of the correctness of the tariff classication recommended, as the Federal Government maintains; it may even justify the presumption that corresponding instructions conform to Community law and in this way, in many cases, also achieve a solution to a dispute outside the unwieldy formal procedure. Nevertheless, the crucial fact is that this does not *guarantee* a uniform interpretation, precisely because this informal procedure cannot serve as the legal basis for binding national provisions determining the scope of a market organization which ultimately is reserved to the Council of Ministers. The judgment in Case 40/69, as you know, also stressed the necessity to observe provisions of Community law and to respect the powers of the Community. In my opinion, it even follows, therefore, that explanatory material emanating from the Commission, even though the formalities prescribed by the Treaty have been observed, is subject to scrutiny in accordance with the basic principles laid down by the Council.

Now if that applies to formal acts of the Commission it can scarcely be maintained that informal communications of the Commission merely based on an agreement among governmental experts provide authorization to adopt binding national explanatory instructions.

Apart from this, one must however welcome the fact that the Commission in the present proceedings emphatically expressed its readiness to assist in solving existing difficulties with an accelerated procedure for interpretation and explanation (which is at present based on Regulation No 97/69). If the Commission achieves this with due observance of the prescribed formalities, that is, progressively establishes an increasingly narrower network of detailed instructions, it will undoubtedly lead to a considerable reduction in the number of possible disputes. Thus the anxiety of the German Government that to continue to follow existing precedents might prejudice the certainty of the law and that the Court of Justice might be inundated with requests for interpretation of the Common Custom Tariff would also come to be unfounded.

Accordingly, the first two questions in Case 74/69 should, following the judgment in Case 40/69, be answered as follows:

> Article 23 of Regulation No 19 of the Council of the European Economic Community of 4 April 1962 must be interpreted to the effect that the Member States are obliged to adopt the measures necessary to eliminate any obstacles to the application of the regulation that may arise from their legislation, but they are not thereby permitted to make internal provisions affecting the scope of the regulation itself.
>
> Article 1 of Regulation No 19 of the Council of the European Economic Community, which enumerates products included in the Common Customs Tariff,

does not empower the national authorities of the Member States to make binding rules of interpretation for the application of these descriptions.

2. The single question in Case 72/69 and the third question in Case 74/69:

As for the actual problem of tariff classification on which the order of the German court in Case 72/69 is concentrated and which must also be examined in Case 74/69, as my analysis so far has shown, the following considerations arise:

As you know, the Bundesfinanzhof would like to know whether a product obtained from manioc roots which contains more than 40% starch (in Case 72/69 it is a question of 55% according to the law then in force) must always be considered as manioc flour under tariff heading 11.06, irrespective of the manufacturing process, or whether other constituents are also relevant to the description. The questions thus concern the scope of application of Regulations Nos 19/62 and 141/64 or, in other words, the distinction between manioc flour and residues from the manufacture of starch, which are not covered by these regulations. Since Community law does not contain any explanatory provisions for the traiff headings in question, it is not exactly easy to answer these questions.

The views held by the parties to the proceedings emerge very clearly from the facts as set out above. The respondents in the two main actions maintain that the manufacturing process is substantially relevant to tariff heading 11.06; manioc flour is solely a product purely of grinding operations which is obtained directly from the processing of roots without further processing treatment. The product at issue here does not correspond to this definition as a large quantity of starch has been eliminated from it. Thus the only possibility that remains is to describe it as tapioca waste, that is to say, residue of starch manufacture within the meaning of tariff heading 23.03. Moreover, it is not possible to fix 40% as the maximum starch content for residues of starch manufacture since with a normal starch extraction process a higher proportion is always left. Furthermore, other factors, such as the raw fibre content, the sugar content and the appearance of the starch, must also be taken into account.

The Government of the Federal Republic of Germany and the Commission of the European Economic Community, on the other hand, contend that the correct interpretation is that contained in the communication of the Commission issued on 13 May 1966. In their opinion, the manufacturing process is not relevant to the definition of the word 'flour' within the meaning of tariff heading 11.06, but solely the extraction of the product from a certain raw material and the characteristic (in the present case, the starch content) that determines its possible uses. If the starch content exceeds 40% there cannot, under any circumstances, by any question of genuine residues from the manufacture of starch, and this is so without taking into account any other elements of the product concerned.

When we come to consider which of these opposite theories is correct, one argument can certainly be excluded right away as unproductive. This is the argument of the respondents in the main action that both before and after the entry into force of Regulation No 19 there was a standard German administrative practice of classifying tapioca waste with a starch content of up to 74% under tariff heading 23.03. This argument is irrelevant for the simple reason that what is, of course, at issue here is the conformity of an administrative practice with the legal rules. Moreover, it would also appear that it had only been possible to obtain a small amount of experience with the product in question and that in view of the import rules in force there had not previously been the same necessity to differentiate clearly between manioc (tapioca) flour and tapioca waste, Finally, it also seems to be established that the administrative practice was not uniform (not only in Germany but also in other Member States) and that it was precisely for this reason that the working party of customs tariff experts found it necessary to draw up a directive.

Let us therefore begin by examining the concept 'manioc flour' in tariff heading 11.06. In the view of the respondents, only a product which is obtained by the simple grinding of the raw material, that is, by the mechanical crushing and pulverizing of manioc roots, should be classified under this heading. On the other hand, it would no longer be 'flour' if other processes, such as a chemical-physical treatment, were added, as they lead to a change in the nature of the product, that is, to a different kind of product. This is what happens in particular when the starch is extracted, that is, washed out from the manioc roots, and this is why it is impossible to describe the ground residues as 'manioc flour'. On this point, the respondents refer to specialist works on the subject and to the Explanatory Notes to the Brussels Nomenclature, according to which tariff heading 11.06 comprises products obtained solely by crushing or pulverizing certain substances. In addition, some indication might be provided by Regulation No 2451/69 of the Council amending Regulation No 950/68 on the Common Customs Tariff. Chapter 11 of the Tariff, part of which is headed 'Products of the milling industry', obviously does not include products obtained by a refining process going beyond the milling treatment of products included under other tariff headings.

Nevertheless, I consider, with the German Government and the Commission, that these deductions are not imperative. The bibliographical references cited by the respondents in page 12 of their written observations may certainly be ignored since they apparently contribute nothing to the solution of the legal problem of tariff classification. Nor is it possible to derive with clarity from Regulation No 2451/69 the indications which the respondents purport to deduce from it. For example, it is in fact expressly declared in this regulation that flour treated with *heat* to improve its suitability for baking shall remain classified under Chapter 11. As for the explanatory notes to the Brussels Nomenclature, it is true that they use the terms 'crushing' and 'pulverizing' in relation to the concept of flour. However, the fact not only that Chapter 11 of the Common Customs Tariff (in contrast with other chapters) does not expressly mention manufacturing processes; but also that at the present day flours properly so-called are not obtained solely by the mechanical processing of certain raw materials, indicates the exemplary nature of the processing methods mentioned and shows that the list is not exhaustive. With regard to manioc flours, one may mention, for example, the indispensable elimination of prussic acid or the mixing with sulphuric acid to obtain a white colour (which may be gathered from the opinion of the expert, Hubrich, submitted by the respondents). With regard to other flours properly so-called, the German Government has emphasized that their production is preceded by a process of decortication (for example, for leguminous plants) or dehydration (for flour from fruits and potatoes), and that these flours are not therefore obtained directly by pulverizing the basic product.

On the basis of the system adopted by Chapter 11 of the Common Customs Tariff it may accordingly be said that the concept 'flour' chiefly indicates a state, that what matters is the qualities of a product, in particular because the manufacturing process cannot often be discerned in a product. Consequently, if not only directly processed raw materials but also substance from which certain elements, such as starch, have been eliminated can be described as flour, there could be no objection as such to the classification of the residues from the manufacture of starch from manioc (tapioca waste) under tariff heading 11.06.

Moreover, this conclusion cannot be affected by the respondents' further argument that tariff heading 11.06 must be interpreted *strictly* because it constitutes a foreign body in the framework of the common organization of the cereals market created by Regulation No 19 and because it must be presumed that the products included under this heading are intended for *human* nutrition. In fact, this argument cannot be accepted, as the common organization of the cereals market certainly also covers animal fodder. To the extent that tropical products compete with domestic products and that this therefore necessitates protection for domestic products, the levying system could perfectly well be extended to them also. However, since residues from the manufacture of starch from manioc, as we have heard during the course of the proceedings, is used almost exclusively as animal fodder, it would in fact be natural to think of classifying them under tariff heading 11.06.

Nevertheless, this obviously does not yet enable us to form a final conclusion. Moreover, this is also the case—to come straight to the point—with the Commission's argument, which is based on the idea that I have just mentioned, that the *intended use* of a product is one of the main considerations for the purposes of applying heading 11.06. The Commission maintains that if, in the light of that use, it can be said that the product competes with domestic fodder (which is true of residues from the manufacture of starch from manioc with a certain starch content), the necessity to protect the domestic production and to grant it a preference (as results from the preamble to Regulation No 19) is an argument in favour of a *wide* interpretation of tariff heading 11.06. In my opinion, this argument cannot be sustained, and for the simple reason that *residues* of starch manufacture under tariff heading 23.03, that is, products which are also used as animal fodder, are clearly not included in the common organization of the market. Such was the situation right from the start; and so it remained after the dispute over the tariff classification of tapioca waste had been publicized, and even though in 1967 other headings of the Common Customs Tariff were expressly added to the scope of application of the common organization of the cereals market. Now if, although certain residues under tariff heading 23.03 come into consideration as fodder, the residues of starch manufacture have plainly remained outside the scope of application of the common organization of the cereals market, and even though considerable quantities of residues from the manufacture of starch from maize had been imported (that is, in so far as a need for protection might have become apparent), the protection of the domestic production (if it was considered necessary or desirable) could certainly not be achieved by means of a wide interpretation of the concept of flour which would partly deprive the term 'residues of starch manufacture' of its content; for this protection would require a legislative enactment by the Community (provided that such an enactment would not be prohibited by the rules of GATT).

I am therefore of the opinion—and here I arrive at the crucial part of my examination —that tariff heading 11.06 can only be accurately circumscribed if the accent is placed in the same way on the term 'residues of starch manufacture' under heading 23.03. Consequently, a product which from its external characteristics would be described as manioc flour cannot be classified under tariff heading 11.06 if it is clearly a question of residues from starch extraction.

Even outlined in this way, our problem is nevertheless far from easy to solve. First of all, the fact that it is relatively easy to establish certain principles must not give rise to any illusions in this respect.

One of these principles is the necessity, in conformity with the rules of GATT, to develop a *uniform* definition of the term 'residues of starch manufacture', that is, not to differentiate according to countries of origin (with their various processing methods and the varied composition of the base product). Any other method would jeopardize the clarity of tariff classification and also provide an incentive for evasions.

It seems equally obvious that one must proceed on the basis of *modern methods of production* that would also be feasible within the Community, that is, the definition in question should not depend on superficial processing methods used by small farmers. Only what remains as waste in modern intensive starch extraction can be classified as a residue within the meaning of heading 23.03, since starch can no longer be extracted from it by a method that is economically viable.

The emphasis on industrialized production methods also makes it clear that the definition cannot depend on what is customarily considered in the *trade* to be residue (that is, according to the respondents in the main action, tapioca waste with a starch content of 65 to 70%). Often such trade usages do not in fact accord with the principles of rational production.

Similarly, according to our formulation of the problem, which places the emphasis squarely on the nature of the composition of the residues from starch manufacturing, it becomes clear that the general explanatory note to heading 23.03 of the Brussels Nomenclature should not be over-estimated. With regard to this explanatory note, according to which residues of starch manufacture are *mainly* composed of raw fibres and protein, the respondents in the main action have in my opinion convincingly shown that it must not be interpreted literally or in a quantitative sense, that is, to mean that the raw fibre and protein content should be more than 50 %. In view of a low protein content (of 1 % to 2 %) and a raw fibre content of up to 20 %, as mentioned in the specialist works (Kling, Die Handelsfuttermittel, Supplement), the explanatory notes to the Brussels Nomenclature cannot in fact be concerned with quantitative data. This becomes even clearer when one realizes that they also apply to residues from the extraction of starch from maize which, according to the undisputed statements of the respondents, evidently never have a raw fibre content of more than 9 %. The explanatory notes to the Brussels Nomenclature can at most mean that it is *characteristic* of residues that they have a high content of raw fibres compared with other elements and with the basic products.

The elements to be found in the residues from the manufacture of starch from manioc are, according to the statements made in the course of the proceedings, undeniably raw fibres, sugar, protein and starch. There was, it is true, no unanimity with regard to the characteristic composition. Nevertheless, in my opinion some of these elements may be excluded *a priori* because they are not sufficiently reliable as criteria for assessment. First, this is the case with the *raw fibre content* (which, along with the protein content, has been the crucial factor for classification purposes in Belgium and France, according to the respondents). Even in what is clearly manioc flour it varies (according to the German Government) depending on the origin and processing method from 1 % to almost 9 % and thus reaches levels which are often cited as typical of residues. Apart from that, it is also clear that manipulations can be carried out precisely by means of the raw fibre content. Similarly, according to the convincing statements made by the German Government, we can rule out as uncharacteristic both the *protein* content and the *sugar* content which is generally very low (the latter in particular because even in the manufacture of pure manioc flour the fragment are occasionally treated with water and thus the sugar content of the flour is reduced in the same way as the sugar content of the residues which are also treated with water). Finally, the content in *corroded starch grains* does not seem to be characteristic of residues since in certain cases it may also be found in flour. According to the observations of the German Government, this is explained by the fact that manioc flour for the purposes of animal fodder is often marketed in the form of pellets and that it may also be intended for further processing into corebinders (nevertheless, still regarded by the Brussels Customs Council as genuine flour).

Thus, everything finally points to the question of deciding what *starch* content is characteristic of residues from the manufacture of starch from manioc roots, as apparently this is also the criterion according to current opinion. As you know, the respondents consider 65 % as normal (a figure which the German Government regards as typical of the production of small farmers); on the other hand, the respondents maintain that the figure of 40 % laid down by the Commission is fictitious because it could not be attained even with modern production methods, and that therefore of course this is true *a fortiori* of the figure of 30 % mentioned by the German Government. Thus we are confronted with a dispute of a factual nature, and the question arises how it can be resolved.

One might first consider accepting the theory that the Court can only define the *principles* (which has to a large extent already been done in the foregoing considerations), and that the solution of the final question in dispute could be left to the court seised of the main action which might possibly make use of an expert. However, I hesitate to propose this solution. The uniformity of application of the law could again be jeopardized at the level of the national courts which are dealing with the proceedings as it frequently occurs that the results of measures of inquiry are variously interpreted by various courts. Thus according to the evidence submitted and its evaluation one court might arrive at the conclusion that a starch content of 40 % was characteristic of residues while another court might fix it at a different level. I need not emphasize that this would be incompatible with the uniformity of the Common Market. Therefore, in a case like the case before us, we cannot avoid attempting, however difficult it may be, to establish absolute clarity on the question of tariff classification in the proceedings relating to the issue of a preliminary ruling themselves. Despite various difficulties I feel that this is possible even without further procedural measures.

In this connexion we must once again first eliminate certain factors put forward by the parties which are, in reality, irrelevant. One of these factors is the respondents' reference to a document issued by the Commission on 8 January 1969 which was part of the preparatory studies relating to the regulation on the marketing of animal fodder and which states that residues from the manufacture of starch from manioc can only be considered as merchantable fodder if it has a minimum starch content of 55% (in relation to 12% water), that is, a minimum starch content of over 60% (in relation to dry material). In fact, this working document must be ignored, not only because it was abandoned in the meantime (and subsequent documents no longer referred to a limit of starch content), but also because in the fixing of common commercial standards and quality requirements other questions were obviously involved and the interests concerned were independent of the customs nomenclature. Conversely, we must also exclude the references of the German Government to customs data from 1964 relating to residues from the manufacture of starch from manioc with a starch content of 34% and 37% (in relation to dry material) and the references to actual imports of such, residues with a similar low starch content. With regard to the customs data, according to the undisputed statements of the respondents, they concerned products spoilt by fermentation and have never been imported. Similarly, the imports mentioned (which were, moreover, of very small quantities) were apparently not typical as the product was of a different kind and had a very high *sand* content.

Once these arguments have been eliminated there only remain a number of quotations from specialist works, investigations and statements of experts and scientific institutes, and calculations, which the parties have submitted. The German Government mainly relies on calculations that were made on the basis of data supplied by the respondents and by the President of the Thailand Manioc Association. These show that it is possible to obtain residues from the manufacture of starch from manioc with a starch content of less than 20%; if the pulp yield is higher the starch content of the residues can be about 46%. This corresponds approximately to the statement of one of the writers cited by the German Government (Krieg) to the effect that a starch content of 31% is correct. Conversely, the respondents were able to refer to the opinion of an expert dated 26 November 1966 and the opinion of the State Institute of Applied Botany dated 22 December 1966, which both mention a starch content of 60%. In addition, they referred to a number of specialist works which show that a starch content of between 50% and 65% in relation to dry material is correct.[1] In view of this situation and, in particular, of the fact that even the President of the Thailand Manioc Association, whose data served as the principal basis for the calculations made by the German Government, considers that a starch content of 55% is not realistic, but on the contrary too low, it seems to me proper to give the greater weight to the statements submitted by the respondents and to acknowledge that they have a firmer foundation. Accordingly, it is thus legiti-

1 — Handbuch der Futtermittel, 1969, Vol. 3: 50 to 60%; the World of India, 1962: over 60%; Stählin, Die Beurteilung der Futtermittel, 1957: 64.6%; Kling, Die Handelsfuttermittel, 1928: 64 to 65%; the Supplementary volume also mentions over 60%.

mate to consider a starch content of 55% to 50% as characteristic of genuine residues from the manufacture of starch from manioc.

In my opinion, the single question in Case 72/69 and the third question in Case 74/69 should be answered accordingly.

3 — Summary

I would therefore propose the following answers to the questions submitted.

The first two questions in Case 74/69:

(a) Article 23 (1) of Regulation No 19 of the Council of the European Economic Community of 4 April 1962 obliged the Member States to do all that was necessary to eliminate any obstacles to the application of the regulation arising from their legislation, but it does not contain any authorization to make internal provisions affecting the scope of the regulation itself.

(b) Article 1 of Regulation No 19 of the Council, which enumerates products included in the Common Customs Tariff, does not empower the national authorities of the Member States to make binding rules of interpretation for the application of these descriptions.

The single question in Case 72/69 and the third question in Case 74/69:

(c) The term 'manioc flour' within the meaning of Article 1 (d) of Regulation No 19 of the Council of the European Economic Community in conjunction with the annex to that regulation must be interpreted to mean the product obtained from manioc roots regardless of the manufacturing process. It can be distinguished from 'residues from the manufacture of starch from manioc' under tariff heading 23.03 solely on the basis of the starch content. As a criterion of delimitation a starch content of between 55% and 60% seems appropriate.

As for the costs of the proceedings, I have, as usual, nothing to say on this subject since this decision will be made in the proceedings before the national court.